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Legislative Audit Division

State of Montana

Report to the Legislature

October 2004

Financial-Compliance Audit

For the Two Fiscal Years Ended June 30, 2004

Montana Chiropractic Legal Panel

This report contains four recommendations for improvement in the Montana Chiropractic Legal Panel's operations. Recommendations in this report include:

- The Montana Chiropractic Legal Panel as a State Agency
- Reasonableness of the Montana Chiropractic Legal Panel Fee Assessment
- Compliance with State Laws
- Conflicting State Laws

Direct comments/inquiries to:
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Single Audit Coordinator
Office of Budget and Program Planning
State Capitol
Helena MT 59620
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Legislative Audit Division
Room 160, State Capitol
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Tori Hunthausen, IS Audit & Operations
James Gillett, Financial-Compliance Audit

October 2004

The Legislative Audit Committee
of the Montana State Legislature:

This is our financial-compliance audit report on the Montana Chiropractic Legal Panel (Panel) for the two fiscal years ended June 30, 2004.

This report contains four recommendations concerning the Panel as a state agency, state compliance issues, and the reasonableness of the fiscal year 2002-03 Panel fee assessment. The Panel's response to our audit is on page B-1.

We thank the director for her assistance and cooperation during our audit.

Respectfully submitted,

Scott A. Seacat
Legislative Auditor

Room 160, State Capitol Building PO Box 201705 Helena, MT 59620-1705
Phone (406) 444-3122 FAX (406) 444-9784 E-Mail lad@state.mt.us

Legislative Audit Division

Financial-Compliance Audit
For the Two Fiscal Years Ended June 30, 2004

Montana Chiropractic Legal Panel

Members of the audit staff involved in this audit were John Fine, Geri Hoffman, and Laura L. Norris.

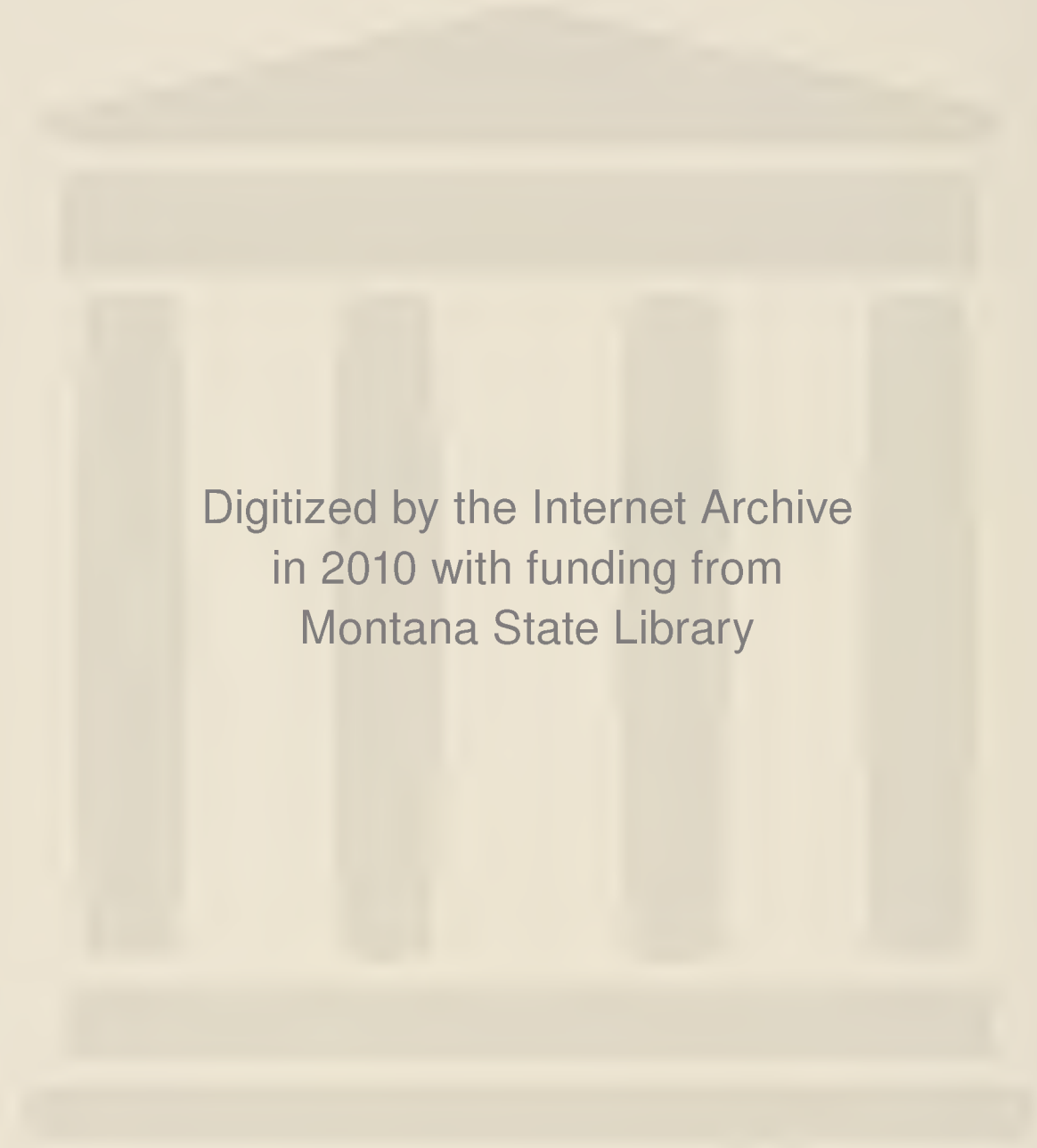
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Table of Contents

Appointed Official ii
Report Summary S-1

Introduction 1
Introduction 1
Background 1
Prior Audit Recommendations 2

Findings and Recommendations 3
Statutes indicate the Montana Chiropractic Legal Panel is a State Agency 3
Fiscal Year 2002-03 Panel Fee Assessment 4
State Compliance 5
Selection of Panel Members 5
Investment of the Panel's Moneys 5
Overpayment of Panel Member Expenses 6
Conflicting State Laws 6

Independent Auditor's Report & Panel Financial Schedules A-1
Independent Auditor's Report A-3

Schedule of Changes in Fund Balance
For the Fiscal Year Ended June 30, 2004 ..... A-5

Schedule of Changes in Fund Balance
For the Fiscal Year Ended June 30, 2003 ..... A-6

Schedule of Total Revenues
For the Fiscal Year Ended June 30, 2003 ..... A-7

Schedule of Total Expenditures
For the Fiscal Year Ended June 30, 2003 ..... A-8

Notes to the Financial Schedules A-9

Panel Response B-1
Montana Chiropractic Legal Panel B-3

Appointed Official

Montana Chiropractic Legal Panel

Mary Lou Garrett, Director

For further information on the Montana Chiropractic Legal Panel, contact:

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Montana Chiropractic Legal Panel

This report documents the issues noted during our financial-compliance audit of the Montana Chiropractic Legal Panel (Panel) for the two fiscal years ended June 30, 2004. The previous audit report contained no recommendations. This report contains four recommendations directed to the Panel director concerning the Panel as a state agency, the reasonableness of the Panel's fiscal year 2002-03 fee assessment on chiropractors, noncompliance with statutes relating to selection of panelists, investment of moneys and overpayment of panelist expenditures, and statutes conflicting over confidentiality of Panel information.

We issued an unqualified opinion on the financial schedules presented in this report. This means the reader can rely on the presented financial information and the supporting detailed information on the primary accounting records.

The listing below serves as a means of summarizing the recommendations contained in the report, the Panel's response thereto, and a reference to the supporting comments.

Recommendation #1

We recommend the Panel director seek legislation eliminating all references in state law which indicate the Panel is a state agency..... 4

Panel Response: Does not concur. See page B-3.

Recommendation #2

We recommend the Panel director appropriately reduce the fee assessed on chiropractic physicians in accordance with state law..... 5

Panel Response: Concur. See page B-3.

Recommendation #3

We recommend the Panel director select its panelists, invest its moneys, and pay travel and salary expenditures in accordance with state law. 6

Panel Response: Partially concur. See page B-4.

Report Summary

Recommendation #4

We recommend the Panel director seek legislation to resolve the conflict in state law concerning confidentiality of Panel records that identify a party to the proceedings..... 6

Panel Response: Concur. See page B-4.

Introduction

Introduction

We performed a financial-compliance audit of the Montana Chiropractic Legal Panel (Panel) for fiscal years 2003-04 and 2002-03. Since the legislature removed the designation of the Panel as a state agency effective July 1, 2003, revenue and expenditure activity for fiscal year 2003-04 was not recorded on the state's accounting records. We audited direct entries to fund balance for that period and verified the state did not record any revenue and expenditure activity. The objectives of the audit were to:

- Determine if the Panel complied with applicable laws and regulations.
- Review the Panel's control systems and make recommendations for the improvement of management.
- Determine if the Panel's financial schedules present fairly its changes in fund balances for the two fiscal years ended June 30, 2004, and results of operations for the fiscal year ended June 30, 2003.

This report contains four recommendations to the Panel. The recommendations address concerns with the Panel being a state agency, compliance with state laws, and the reasonableness of the fiscal year 2002-03 Panel fee assessment. Other areas of concern not having a significant effect on the successful operations of the department are not included in this report, but have been discussed with management.

In accordance with section 5-13-307, MCA, we analyzed and disclosed the cost, if significant, of implementing the recommendations made in this report.

In accordance with section 27-12-207(1), MCA, we analyzed the annual fee assessed to chiropractic physicians and found it unreasonable. This issue is discussed beginning on page 5.

Background

The Panel was established as a state agency in January 1990. Its duties are set forth in Title 27, Chapter 12, of the MCA. The Panel director is appointed in accordance with state law.

Introduction

The Panel reviews malpractice claims made against chiropractic physicians. It must hear the claim and make a decision on it before a claim can be filed in court. During fiscal year 2002-03 there were five claims filed.

The 58th Legislature removed the Panel's designation as a state agency as of July 1, 2003. While the Panel was a state agency, the Department of Administration recorded its transactions on the state's accounting records.

Prior Audit Recommendations

There were no prior audit recommendations.

Findings and Recommendations

Statutes indicate the Montana Chiropractic Legal Panel is a State Agency

The 58th Legislature did not take into consideration all of the statutes when it decided the Montana Chiropractic Legal Panel (Panel) was no longer a state agency.

The 58th Legislature, in Chapter 175, Laws of 2003, stated the Panel is no longer a state agency when it deleted the language stating that the Panel "is a state agency" from section 27-12-104, MCA. The intention of the legislature was spelled out in the chapter and in testimony by the bill sponsor to a legislative committee.

The legislature did not amend other existing statutes, which indicate the Panel may still be a state agency. The laws are listed below.

- Section 27-12-104, MCA, states the Panel is allocated to the Supreme Court for administrative purposes.
- Section 27-12-201, MCA, states the executive director of the Montana Chiropractic Association shall appoint the director of the Panel, subject to the approval of the Chief Justice of the Montana Supreme Court. The director shall serve at the pleasure of and the director's salary must be set by the executive director of the Montana Chiropractic Association, subject to the approval of the Chief Justice.
- Section 27-12-202, MCA, states the director, subject to the approval of the Chief Justice, may employ and determine the compensation for clerical and other assistants as he considers necessary.
- Section 27-12-203, MCA, states each member of the Panel must be paid a salary of $40 an hour, under guidelines promulgated by the Montana Supreme Court.
- Section 27-12-204, MCA, states the director, in consultation with the State Bar of Montana and subject to approval of the Supreme Court, is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the Panel.
- Sections 27-12-206 and 27-12-207, MCA, state the Panel and fund must be audited by or at the direction of the legislative auditor.

If the above laws are not amended to remove the references to state control over the Panel, the Panel may still be a state agency subject to all statues governing how a state agency is to conduct its operations.

Recommendation #1

We recommend the Panel director seek legislation eliminating all references in state law which indicate the Panel is a state agency.

Fiscal Year 2002-03 Panel Fee Assessment

The Panel fee assessment on chiropractic physicians was not reasonable in fiscal year 2002-03.

Section 27-12-206, MCA, states each year the director will assess on all chiropractic physicians a fee. A fund surplus at the end of a fiscal year that is not required for the administration of the Panel must be retained by the director and used to finance the next fiscal year. During the next fiscal year the director shall reduce the annual assessment to an amount estimated to be necessary for the proper administration of the Panel. At the beginning of fiscal year 2002-03 the Panel had a fund balance of $43,804.

From fiscal year 1994-95 to fiscal year 2001-02, the Panel's annual expenditures averaged $9,086, and ranged from $1,739 to $15,800. During the same time its annual revenues averaged $12,192 and ranged from $10,350 to $13,560. At the beginning of fiscal year 2002-03 the Panel's fund balance was 4.8 times greater than its average annual expenditures and 2.8 times greater than its highest annual expenditure level. With Panel revenues fairly consistent, received at the beginning of the fiscal year, and approximating the previous maximum expenditures, it is reasonable the Panel would only need to keep one year's average annual expenditures in reserve. As required by state law, the Panel should refund the excess fund balance by reducing its next annual fee assessment.

The director said she has not changed the fees because the number of chiropractors and the number of Panel hearings vary between years.

Recommendation #2

We recommend the Panel director appropriately reduce the fee assessed on chiropractic physicians in accordance with state law.

State Compliance

The Panel is not in compliance with state laws related to the selection of panelists, investment of moneys, and reimbursement of travel and salary expenditures.

Selection of Panel Members

The composition of the Panel changes each time there is a case brought before the Panel. Each Panel is composed of six people, three attorneys and three chiropractors. According to section 27-12-402(1), MCA, the director shall promptly transmit a hearing application to the State Bar of Montana. Within 14 days of the transmittal of the application, the State Bar of Montana shall select 12 proposed panelists from which the director shall select three to serve on the Panel.

According to the director, the State Bar of Montana did not want to receive the applications and select the 12 proposed panelists as required by law. As an alternative, at the beginning of the fiscal year, the State Bar of Montana provides the director a list of all attorneys in the state of Montana. The director then selects 12 attorneys from the list provided by the State Bar of Montana. Later in the process, the director selects the three attorneys who sit on the Panel. This process has been in place since fiscal year 1994-95.

Investment of the Panel's Moneys

Section 27-12-206 (1), MCA, states the fund, and any income from it, must be held in trust, invested and reinvested by the director. During fiscal year 2002-03 the director did not invest the moneys held by the Panel. Throughout the year the Panel had an average cash balance of $40,380, and we estimate it lost investment earning of $600. The director was not aware that the investment requirement was in statute in fiscal year 2002-03. She thought this was a new requirement from the 2003 legislative session.

Findings and Recommendations

Overpayment of Panel Member Expenses

Section 27-12-203, MCA, allows for the payment of $40 per hour to Panel members and the reimbursement of travel expenses in accordance with state law. After one Panel meeting, the director approved a salary payment for a member of $202.50 and travel expenditures amounting to $295.14. The Panel member was entitled to $242.50 for salary and $93.64 for travel. The Panel member was overpaid by $162.50.

Recommendation #3

We recommend the Panel director select its panelists, invest its moneys, and pay travel and salary expenditures in accordance with state law.

Conflicting State Laws

There are two state laws involving the Panel, which are contradictory to each other.

In an instance where a chiropractor has a claim filed against him or her because one of his/her employees caused damage to a person, section 27-12-304, MCA, requires a copy of an application to the Panel be provided to the board with which the chiropractor is licensed. The application lists the names of all the participants in the claim. Section 27-12-702, MCA, states records that identify a party to the proceedings may not be made public.

Section 37-12-201(4), MCA, states that the chiropractic licensing board proceedings are open to public inspection at all times. Since the information at the licensing board is public, a conflict exists between sections 27-12-304 and 27-12-702, MCA.

Recommendation #4

We recommend the Panel director seek legislation to resolve the conflict in state law concerning confidentiality of Panel records that identify a party to the proceedings.

Independent Auditor's Report & Panel Financial Schedules

LEGISLATIVE AUDIT DIVISION

Scott A. Seacat, Legislative Auditor
John W. Northey, Legal Counsel

Deputy Legislative Auditors:
Jim Pellegrini, Performance Audit
Tori Hunthausen, IS Audit & Operations
James Gillett, Financial-Compliance Audit

INDEPENDENT AUDITOR'S REPORT

The Legislative Audit Committee
of the Montana State Legislature:

We have audited the accompanying Schedules of Changes in Fund Balance for each of the two fiscal years ended June 30, 2004, Schedule of Total Revenues, and Schedule of Total Expenditures of the Montana Chiropractic Legal Panel (Panel) for the fiscal year ended June 30, 2003. The information contained in these financial schedules is the responsibility of the Panel's management. Our responsibility is to express an opinion on these financial schedules based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United State of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial schedules are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial schedules. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in note 1, the financial schedules are presented on a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The schedules are not intended to be a complete presentation and disclosure of the Panel's assets and liabilities.

In our opinion, the financial schedules referred to above present fairly, in all material respects, the results of operations for the fiscal year ended June 30, 2003 and changes in fund balance of the Panel for each of the two fiscal years ended June 30, 2004, in conformity with the basis of accounting described in note 1.

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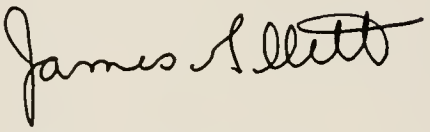
The 58th Legislature passed legislation to remove the Panel's designation as a state agency. As of July 1, 2003, the Panel became a private association and is no longer a state agency.

Respectfully submitted,



James Gillett, CPA
Deputy Legislative Auditor

August 18, 2004

MONTANA CHIROPRACTIC LEGAL PANEL
SCHEDULE OF CHANGES IN FUND BALANCE
FOR THE FISCAL YEAR ENDED JUNE 30, 2004

	State Special Revenue Fund
FUND BALANCE: July 1, 2003	$ 36,957
ADDITIONS	
Direct Entries to Fund Balance	(36,957)
Total Additions	(36,957)
REDUCTIONS	
Total Reductions	0
FUND BALANCE: June 30, 2004	$ 0

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

MONTANA CHIROPRACTIC LEGAL PANEL
SCHEDULE OF CHANGES IN FUND BALANCE
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

	State Special Revenue Fund
FUND BALANCE: July 1, 2002	$ 43,804
ADDITIONS	
Budgeted Revenues	14,525
Total Additions	14,525
REDUCTIONS	
Budgeted Expenditures	21,372
Total Reductions	21,372
FUND BALANCE: June 30, 2003	$ 36,957

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

MONTANA CHIROPRACTIC LEGAL PANEL
SCHEDULE OF TOTAL REVENUES
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

	State Special Revenue Fund
TOTAL REVENUES BY CLASS	
Charges for Services	$ 14,525
Total Revenues	14,525
Actual Budgeted Revenues	14,525
Estimated Revenues	15,000
Budgeted Revenues Over (Under) Estimated	$ (475)
BUDGETED REVENUES OVER (UNDER) ESTIMATED BY CLASS	
Charges for Services	$ (475)
Budgeted Revenues Over (Under) Estimated	$ (475)

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

MONTANA CHIROPRACTIC LEGAL PANEL
SCHEDULE OF TOTAL EXPENDITURES
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

		Montana Chiropractic Legal Panel
PROGRAM (ORG) EXPENDITURES		
Operating Expenses		
Other Services	$	17,076
Supplies & Materials		1,192
Communications		1,539
Travel		939
Rent		99
Other Expenses		527
Total		21,372
Total Expenditures	$	21,372
EXPENDITURES BY FUND		
State Special Revenue Fund	$	21,372
Total Expenditures		21,372
Actual Budgeted Expenditures		21,372
Budget Authority		22,000
Unspent Budget Authority	$	(628)
UNSPENT BUDGET AUTHORITY BY FUND		
State Special Revenue Fund	$	(628)
Unspent Budget Authority	$	(628)

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

Montana Chiropractic Legal Panel
Notes to the Financial Schedules
For the Two Fiscal Years Ended June 30, 2004

1. Summary of Significant Accounting Policies

Basis of Accounting

The Montana Chiropractic Legal Panel (Panel) uses the modified accrual basis of accounting, as defined by state accounting policy, for its State Special Revenue Fund. In applying the modified accrual basis, the Panel records:

Revenues when it receives cash or when receipts are measurable and available to pay current period liabilities.

Expenditures for valid obligations when the Panel incurs the related liability and it is measurable.

Expenditures may include entire budgeted service contracts even though the Panel receives the services in a subsequent fiscal year; goods ordered with a purchase order before fiscal year-end, but not received as of fiscal year-end; and equipment ordered with a purchase order before fiscal year-end.

Basis of Presentation

The financial schedule format is in accordance with the policy of the Legislative Audit Committee. The financial schedules are prepared from the transactions posted to the state's accounting system without adjustment. Accounts are organized in funds according to state law. The Panel uses the following fund:

Governmental Fund Category

State Special Revenue Fund – to account for proceeds of specific revenue sources legally restricted to expenditures for specific purposes. The Panel's entire operation is accounted for in a State Special Revenue Fund.

Notes to the Financial Schedules

2. Expenditure Program

As part of the implementation of a new accounting system, state officials determined that an organization designation would identify the program to which expenditures should be charged.

3. Expenditures

The Panel's "other services" include the management fee paid to the Panel director, and the costs associated with conducting Panel reviews. The Panel held six hearings during fiscal year 2002-03.

4. Fiscal Year 2003-04 Revenue and Expenditure Activity

There are no fiscal year 2003-04 Schedule of Total Revenues and Schedule of Total Expenditures because as of July 1, 2003, the Panel's designation as a state agency was removed. There is a Schedule of Changes in Fund Balance because the state provided the Panel its cash that remained with the state at the beginning of fiscal year 2003-04.

5. Related Parties

The executive director of the Montana Chiropractic Association is also the director of the Montana Chiropractic Legal Panel. The executive director of the Montana Chiropractic Association appoints, and sets the salary of, the director of the Panel, subject to approval of the Chief Justice of the Montana Supreme Court.

Panel Response

MONTANA
CHIROPRACTIC LEGAL PANEL

318 E. 6th Avenue
PO Box 1098
Helena, Montana 59624-1098

Phone: (406) 442-7275
FAX: (406) 443-5791

Director:
Mary Lou Garrett

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October 13, 2004

Scott Seacat, Legislative Auditor
Legislative Audit Division
PO Box 201705
Helena, MT 59620-1705

Dear Mr. Seacat:

The following is my response, as director of the Chiropractic Legal panel, to the Findings and Recommendations of the Financial-compliance audit for two fiscal years ended June 30, 2004.

RECOMMENDATION #1 We recommend the panel director seek legislation eliminating all references in state law which indicate the panel is a state agency.

RESPONSE: Disagree.

The legislative intent was to eliminate the chiropractic legal panel as a "state agency" and a pretrial review fund for the administration of the panel similar to the medical legal panel. The legislative intent was to set up the pretrial review fund so that the panel would administer daily operations without utilizing the services of the Department of Administration, Department of Justice or the Supreme Court accounting divisions.

In checking with Greg Petesch, Code Commissioner , Legislative Services Division, assured the director that the legislative intent was applicable and that the statutes in question do not need eliminating, or the panel would cease to exist.

A request to the Chief Justice, Montana Supreme Court, regarding the references to the Chief Justice and the Supreme Court in current statute has not been received by the director as of this date.

RECOMMENDATION #2 We recommend the panel director appropriately reduce the fee assessed on chiropractic physicians in accordance with state law.

RESPONSE: Agree.

Reduction in assessment will be implemented for 2005 renewal.
RECOMMENDATION #3. We recommend the panel director select its panelists, invest its moneys and pay travel and salary expenditures in accordance with state law.

RESPONSE: Each of of the three issues will be addressed separately.

1. Selection of panelists. Disagree.
The State Bar of Montana does not want the applications. The State Bar of Montana furnishes the legal panel with annual Lawyers Deskbook and Directory for selecting the attorney members of the panel. This has been the accepted practice prior to this directors tenure and currently still in place. The director selects 12 proposed attorney panelists from the directory, sends the appropriate notice of panel selection. The director selects the final three panelists from the list that are available or have not been disqualified. The director will further discuss the possibility of proposed legislation to change this manner of selection to utilizing the directory published annually by the State Bar of Montana.

2.. Investment of Moneys. Agree.
As of August 28, 2004, $30,000 was invested in a Certificate of Deposit at US Bank, Helena Branch to meet the requirements of Section 27-12-206(1). (copy attached)

3. Reimbursement of travel and salary expenditures. Agree
This is and was the only accounting error in the 10 years the current director has served the legal panel. The director will more closely review expenditures.

RECOMMENDATION #4. We recommend the panel director seek legislation to resolve the conflict in state law concerning confidentiality of panel records that identify a party to the proceedings.

RESPONSE: Agree.

The director has prepared draft legislation for the 2005 Legislature, regarding the confidentiality of panel records due to HIPAA regulations and current Montana statutes regarding patient confidentiality and to eliminate contradictory language between the chiropractic legal panel and chiropractic licensing board.

Sincerely,

Mary Lou Garrett

Mary Lou Garrett,
Director